Supreme Court, U.S.
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E. ROBERT SEAVER, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71-378

KENNETH G. FLICKINGER, Registrar of Contractors of the State of Arizona,

Petitioner,

vs.

ELECTRIC CONSTRUCTION CO., INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

CONCURRENCE OF RESPONDENT THAT CERTIORARI BE GRANTED

LAWRENCE K. BRET HARTE
Counsel for Respondent

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MEMORANDUM FOR RESPONDENT

The question presented on this petition for certiorari is whether a subcontractor who works on a federal project in the State of Arizona may be required by that state to obtain an Arizona con-

tractor's license.

Restated, the question is whether the federal power to impose qualifications on subcontractors on federal projects precludes the State of Arizona from imposing its own qualifications by the application of its contractor's licensing laws.

In a well reasoned opinion, the highest court of Arizona has held that its licensing laws have no application to federal subcontractors. The conclusion of the Arizona Supreme Court is plainly correct and clearly unassailable. It extends the principle of immunity set forth by the United States Supreme Court in Miller v. Arkansas, 352 U.S. 187, 77 S.Ct. 257, 1 L.Ed.2d 231, from a federal prime contractor to the subcontractor.

The rational of the Arizona Supreme Court is well supported by Paul v. United States, 371 U.S. 245, 83 S.Ct. 426, 9 L.Ed.2d 292.

For the foregoing reasons, respondent believes the opinion of the Arizona Supreme Court should be affirmed.

However, respondent concurs with petitioner and the National Association of Contractors that this petition for certiorari presents important issues of

federal law as to which there may be conflict among the circuits and as to which there should be a final decision by the Supreme Court of the United States.

There is sufficient doubt surrounding the issues, and the issues are of sufficient national importance, that respondent does not oppose the granting of the writ with respect to these questions.

CONCLUSION

It is respectfully submitted that because there are important issues of federal law as to which there may be conflict among the circuits, and as to which there should be a final decision by the Supreme Court of the United States, this court should issue the writ, hear argument on the merits and thereafter affirm the decision below.

Respectfully submitted,

LAWRENCE K. BRET HARTE
Counsel for Respondent